

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WHOLE WOMAN'S HEALTH, et al., §
§
Plaintiffs, §
v. §
§
AUSTIN REEVE JACKSON, et al., §
§
Defendants. §

Cause No. 1:21-cv-00616-RP

**DEFENDANTS' OPPOSED MOTION TO STAY SUMMARY JUDGMENT
AND CLASS CERTIFICATION PROCEEDINGS**

Defendants file this Opposed Motion to Stay Summary Judgment and Class Certification Proceedings, respectfully showing the following:

Plaintiffs filed this lawsuit on July 13, 2021. *See* Docket No. 1. The various State Defendants¹ and Defendant Penny Clarkston received service on either July 14 or July 15, 2021. Defendant Mark Lee Dickson was served on July 16, 2021. Pursuant to the applicable rules, State Defendants intend to file their responsive pleadings by August 4, 2021, and Mr. Dickson intends to file his responsive pleading by August 6, 2021. Defendants are also aware that Plaintiffs have filed a lengthy

¹ The State Defendants include Hon. Austin Reeve Jackson, Judge of the 114th Judicial District Court; Stephen Brint Carlton, Executive Director of the Texas Medical Board; Katherine A. Thomas, Executive Director of the Texas Board of Nursing; Cecile Erwin Young, Executive Commissioner of the Texas Health and Human Services Commission; Allison Vordenbaumen Benz, Executive Director of the Texas Board of Pharmacy; and Ken Paxton, Attorney General of Texas (collectively "State Defendants"). Plaintiffs have sued State Defendants in their official capacities.

motion for summary judgment (Docket No. 19) and a separate motion for class certification (Docket No. 32).

Defendants intend to raise various jurisdictional arguments in their initial responsive pleadings, explaining why this Court lacks subject-matter jurisdiction over this case and why many or all of Plaintiffs' claims are barred by sovereign immunity. Accordingly, Defendants request this Court to stay any further briefing or consideration of Plaintiffs' motion for summary judgment and motion for class certification until after Defendants have filed their initial responsive pleadings and the Court has had a reasonable opportunity to consider the threshold issues of jurisdiction and immunity that will be raised therein. The Northern District of Texas recently did just that in a similar case before dismissing for lack of subject-matter jurisdiction. *Planned Parenthood of Greater Tex. Surg. Health Servs. v. City of Lubbock, Tex.*, No. 5:21-CV-114-H, 2021 WL 2385110, at *6 (N.D. Tex. June 1, 2021); *see also, e.g., Franciscan Alliance, Inc. v. Burwell*, No. 7:16-cv-00108-O, 2016 WL 9281524, at *2–3 (W.D. Tex. Nov. 1, 2016) (staying summary judgment proceedings where plaintiffs filed a summary judgment motion before defendants had filed their answer and where defendants intended to contest subject-matter jurisdiction).

Counsel for State Defendants has conferred with counsel for Plaintiffs regarding this motion. Although Plaintiffs oppose a stay, they are willing to discuss a jointly agreed briefing schedule. Defendants would be willing to discuss a joint briefing schedule for all parties' various motions after Defendants have filed their

initial responsive pleadings. In the meantime, Defendants request a stay as described in this motion.

CONCLUSION & PRAYER

For the foregoing reasons, Defendants ask this Court to stay all further briefing and proceedings related to Plaintiffs' motion for summary judgment and motion for class certification until after Defendants' forthcoming jurisdictional challenges have been resolved.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

On July 27, 2021, I conferred via telephone with Marc Hearron, counsel for Plaintiffs, regarding whether Plaintiffs would agree to the stay requested in this motion. Mr. Hearron informed me that Plaintiffs did not agree to the stay.

/s/ Benjamin S. Walton
BENJAMIN S. WALTON
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2021, a true and correct copy of this document was electronically filed using the Court's CM/ECF system, which will send notification of such filing to the following counsel of record:

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